

Tuition Tax Credit - Institutions Outside Canada - Zailo

Tuition Tax Credit for Institutions Outside Canada: What qualifies as a "degree"?

Zailo v The Queen, [2014 TCC 60](#)

At issue was what the word "degree" refers to as used in paragraph 118.5(1)(b) of the *Income Tax Act*.

The Court held that "degree" does not include an associate degree, but refers to a bachelor's degree or higher.

FACTS

In 2011, the Applicant was enrolled as a full-time student at a "university outside of Canada" (for purposes of paragraph 118.5(1)(b) of the ITA) that offered bachelor's degrees, associate degrees, and non-degree programs. The program the applicant was enrolled in led to an associate of arts degree when combined with performance programs, but does not lead to a bachelor's degree (rather only a certificate).

The MNR reassessed and denied the credit.

ANALYSIS

Paragraph 118.5(1)(b) allows for a deduction from tax payable in circumstances where "the individual was during the year a student in full-time attendance at a university outside Canada in a course leading to a degree".

This is compared to the credit allowed for those attending educational institutions in Canada and cross-boarder commuters when enrolled in a "college or other educational institution providing courses at a post-secondary school level" (See 118.5(1)(a)(i); 118.5(1)(c)(i)).

The Court referred to the FCA decision in *Klassen v Canada*, [2007 FCA 339](#), where "degree" was equated to a Bachelor's degree or higher. The Court also referred to the distinction in wording as to when the credit is available for those living outside of Canada and those living in Canada, and the importance not to interpret one so as to make the difference meaningless.

The TCC concluded that an associate's degree is not eligible for a tuition credit.

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